

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 181 of 2012

1. Govind Singh, S/o Pancharam Rawat, aged about 25 years, Agriculturist, r/o Village - Gorhi, Police Station House Kapoo , Distt. Raigarh C.G.

**---- Appellant
(In Jail)**

Versus

1. State of Chhattisgarh, through Police Station House, Kapoo, District Raigarh (Chhattisgarh)

---- Respondent

For Appellant:
For Respondent:

Shri Gajendra Sahu, Advocate.
Shri U.K.S. Chandel, Panel Lawyer

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Chandra Bhushan Bajpai

JUDGEMENT

Per P. Diwaker J,

20/11/2015

1. This appeal arises out of the impugned judgment of conviction & order of sentence dated 27.9.2011 passed by the 1st Additional Sessions Judge, Raigarh in S.T. No.160/2010 convicting the accused/appellant under Section 302 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo rigorous imprisonment for life.
2. In the present case name of deceased is Fulmati Bai, wife of accused/appellant. It is alleged that on 5.8.2010 the accused/appellant after bolting the door of his house from inside had assaulted the deceased with hands, fists & club causing various injuries. Upon receiving telephonic information, PW-1 Kartikram Rawat, brother of deceased, along with others came to the house of accused/appellant and saw her sister lying in injured condition. He immediately arranged for a jeep and brought the deceased to his house, however, on the way she succumbed to the injuries caused by accused/appellant On 6.8.2010 Kartikram (PW-1) lodged FIR (Ex.P-1) under Section 302 of the IPC against the accused/appellant. Merg

Intimation (Ex.P-2) was also recorded on 6.8.2010. The Investigating Officer after summoning the witnesses, prepared inquest over the body of deceased vide Ex.P-7. Dead body was sent for post-mortem examination to the Community Health Centre Dharamjaigarh where Dr. B.L. Bhagat (PW-11) conducted post mortem vide Ex.P-11 and noticed following injuries:-

- Contusion in the right face of 5x2cm size.
- Contusion in the right side of neck of 3x1cm size.
- Abrasion in the right forehead of 3x1cm size.
- Swelling in left leg. Blackish discolouration of left leg. Swelling was also present in the right hand and upper part of left hand.

In his opinion, cause of death was syncope as a result of internal haemorrhage caused by injury to blood vessel and the nature of death was opined to be homicidal. After completion of investigation, charge sheet was filed against the accused/appellant under Section 302 of the IPC and accordingly the charge was framed by the Court below against him.

3. In order to convict accused/appellant, the prosecution had examined 15 witnesses in all. Statement of accused/appellant was recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case and pleaded innocence & false implication.
4. Learned counsel for the appellant submits that even if the entire prosecution case is taken as it is, at best the accused/appellant can be convicted under Section 304 Part-II of the IPC and not under Section 302 of the IPC, as has been done by the Court below. He further submits that accused/appellant is in jail since 6.8.2010 and therefore after converting his conviction into Section 304 Part-II of the IPC, he may be sentenced to the period already undergone by him.

5. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State that conviction of accused/appellant is strictly in accordance with law and there is no illegality or infirmity in the judgment impugned warranting interference by this Court.
6. Heard learned counsel for the parties and perused the material available on record.
7. Kartikram (PW-1) is brother of the deceased. He has stated that accused/appellant used to beat the deceased after bolting the room from inside. On the date of incident, after being informed that accused/appellant is beating his sister, he along with Ramesh & Mehttar had come to house of the deceased and saw her sister lying in injured condition. On being asked, accused/appellant informed that as the deceased had not cooked food for him therefore he has beaten her by hands & stick. This witness has further stated that the deceased requested him to take her with him as this time she will not survive. Thereafter he arranged a Jeep and brought the deceased to his house at Ratanpur, however, on reaching home, he noticed that the deceased had already expired. Thereafter, he had lodged FIR and Merg.
8. Smt. Rodho Bai (PW-2), mother of deceased, has stated that the accused/appellant used to beat the deceased and on the date of incident after receiving telephonic information, her son (PW-1) had gone to the house of accused/appellant and on seeing her in injured condition, he brought her in the Jeep, but she died.
9. Smt. Piyasi Bai (PW-3) is the witness of memorandum statement (Ex.P-8) of accused/appellant by which club was seized, but she has not supported the prosecution case and turned hostile. However, she has admitted her signature over the said document.

10. Sunderam Rawat (PW-5) is the father of deceased and has made similar statement as has been made by Smt. Rodho Bai (PW-2), mother of deceased. He has stated that accused/appellant had confessed before him that it is he who caused injuries to the deceased.
11. Bandhuraam Vishwakarma (PW-6) is also a witness of extra-judicial confession made by accused/appellant before him.
12. Hema Yadav (PW-8) is a child witness. She is niece of accused/appellant. She has stated that on the date of incident there was quarrel between the accused/appellant and the deceased. She saw the accused/appellant beating the deceased. She has stated that at times the deceased also used to consume liquor.
13. Saroj Kumar Rathiya (PW-9) is the witness of memorandum (Ex.P-8) & seizure memo (Ex.P-9). This witness has not supported the prosecution case and turned hostile, however, admitted her signature over the aforesaid documents.
14. Dr. B.L. Bhagat (PW-11) has conducted post-mortem examination over the body of deceased and noticed injuries as described above. According to him, the cause of death was syncope due to internal haemorrhage caused by injury to blood vessel and the death was homicidal in nature.
15. Rajkumar Rathiya (PW-12) is the Patwari who prepared the spot map (Ex.P-10).
16. Mahetram Patel (PW-13) is the person who immediately reached on the spot and before whom accused/appellant has made extra-judicial confession.
17. K.L. Yadav (PW-15) is the investigating officer who has duly proved the prosecution case.

18. Minute scrutiny of evidence makes it clear that on a trivial issue that the deceased had not cooked food for the accused/appellant, he had assaulted the deceased with hands, fists & club and unfortunately the injuries so inflicted resulted in her death. Incident was witnessed by Ku. Hema Yadav (PW-8), niece of accused/appellant, who has stated that it is the accused/appellant who had assaulted the deceased. In the cross-examination this witness remained very firm and nothing could be elicited from her. That apart, accused/appellant has made confessional statement before Kartikram (PW-1), Sunderram Rawat (PW-5) & Mahetram Patel (PW-13) that since the deceased had not cooked food for him, he had beaten her. Thus, on the basis of evidence adduced by the prosecution, the complicity of accused/appellant in commission of the offence stands proved beyond all reasonable doubt.

19. Now the question arises for consideration before this Court is whether act of accused/appellant amounts to murder or it falls within any of the Exceptions to Section 300 of the IPC?

20. From the evidence it appears that after coming back home from the work when the accused/appellant found that the deceased had not cooked food for him, he got annoyed and assaulted her with hands & stick causing various injuries resulting into her death. It is thus apparent that he had no intention to cause such bodily injury to the deceased as was likely to result in her death and his only intention seems to be just to teach her lesson for not cooking food for him. Evidence further makes it clear that the accused/appellant had no premeditation on his part to cause such bodily injuries to the deceased which could lead to her death and the incident occurred on the spur of moment and in the heat of passion as the deceased had not cooked food for the accused/appellant. Thus, this Court thinks that the act of accused/appellant can at best be termed as culpable homicide and not

murder and therefore it is covered within Exception-IV to Section 300 of the IPC. Moreover, the doctor (PW-11) who conducted the post-mortem examination on the body of the deceased and gave his report (Ex.P-11) has nowhere stated that the injuries caused to the deceased were sufficient to cause death in the ordinary course of nature. That being the position, this Court is of the considered opinion that conviction of accused/appellant under Section 302 of the IPC is not based on the correct appreciation of evidence available on record and taking into consideration all aspects of the matter, he can at best be convicted under Section 304 Part-II of the IPC.

From the record it appears that the accused/ appellant is in jail since 6.8.2010 and thereby he has completed more than 5 years of imprisonment. In the peculiar facts and circumstances of the case, the interest of justice would be served if he is sentenced to the period already undergone by him.

21. In the result, the appeal is allowed in part. Conviction of the appellant under Section 302 of the IPC is altered to Section 304 Part-II of the IPC and he is sentenced to the period already undergone by him. He is reported to be in jail, therefore, he be set at liberty forthwith if not required to be detained in any other case.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(C.B. Bajpai)
Judge

roshan/-